ORIGINAL

RECEIVED
JUL 13 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-2094

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

v.

BRENDA MARIE PAYTON,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

WARREN B. WILSON
Law Offices of Wilson & Casey
653-11th Street
Oakland, California 94607

Counsel for Respondent

July 9, 1981

QUESTIONS PRESENTED FOR REVIEW

Can a state court order a private physician and dialysis unit, against their will, to render medical services to an individual patient, where:

(1) the patient has terminal kidney disease which requires regular dialysis treatment for her life survival,

(2) no other local health care providers who have these specialized dialysis facilities will accept this patient and provide her with regular medical care,

(3) such order is made in order to preserve the status quo, pending an appeal which will have important and broad effects in the medical and legal fields, in that it raises basic issues regarding the rights and responsibilities of those physicians and health care providers who have control over life-sustaining medical equipment, in relation to those patients who are dependent upon these machines for their life survival, and

(4) the physician and health care providers are fully compensated by the government for all services rendered to the patient under this temporary order?

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Opinions Below	1
Statement of the Case.	2
Reasons for Denying the Writ	
I. The Order which is the subject of this Petition is collateral to a substantive appeal which raises issues of national public concern and has ramifications far broader than to the parties involved in this case.	8
II. Petitioner WEAVER's claim that he is being forced into involuntary servitude must be considered within the total context of this case, and the burden imposed on Petitioner's by the temporary Order must be weighed against the gravity of the consequences to Respondent, if this temporary Order is terminated before the appeal is heard.	13
Conclusion.	17

CITATIONS

Cases:	Page
Baltimore & Philadelphia Steamboat Co. v. Ministers & Trustees of Stow Methodist Protestant Church, 130 A 46, 149 Md 163 (1925).	14
Blair v. Blair, 199 Or 273, 247 P2d 883 (1952) .	9
City of Pasadena v. Superior Court	9
Community Natural Gas Co. v. City of Cisco . . .	13
Eutectic Welding Alloys Corp. v. Zeisel.	14
Maryland Trust Co. v. Tulip Realty of Maryland .	14
Merchants Warehouse Co. v. United States	9
Palmer v. Harris	9
People ex. Rel. S.F. B.C.D.C. v. Emeryville. . .	9
Rice and Adams Corp. v. Lathrop.	14
State v. Board of Education.	9
Terminal R. Assoc. v. United States.	8
United States v. Adler's Creamery, Inc..	13
Yakers v. United States.	14
Miscellaneous: 42 Am Jur 2d 751, Inj. §20	13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-2094

JOHN C. WEAVER, JR., M.D. and

BMA OF OAKLAND, INC.,

Petitioners,

v.

BRENDA MARIE PAYTON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent BRENDA MARIE PAYTON respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Order of the California Supreme Court entered in this proceeding March 11, 1981.

OPINIONS BELOW

On June 30,1980, a trial Judge of the Alameda County Superior Court ordered that Petitioners JOHN C. WEAVER and BMA OF OAKLAND, INC. provide dialysis treatment

to Respondent pending her appeal of his decision of that same date, wherein he ordered that Respondent could not compel Petitioners to provide her with regular dialysis treatment. Notices of Appeal were promptly filed by both Petitioners and Respondent. With the filing of their Appellants' Opening brief, Petitioners filed a Petition for Writ of Supersedeas to relieve them of obligations to treat the Respondent under this interim Order. Although Respondent filed her opening brief on January 29, 1981, on February 20, 1981, the Court of Appeal, District One, Division One, granted the Petition for Supersedeas. Recognizing the gravity of the consequences of the Appellate Court's Order, on February 24, 1981, the California Supreme Court stayed execution of the Order of the Court of Appeals granting supersedeas, pending their consideration of Respondent's Petition for Hearing. On March 11, 1981, the Supreme Court made the Order which is the subject of the present Petition for Writ of Certiorari, wherein they granted the Petition for Hearing, re-transferred the cause to the Court of Appeal, First District, Division One, for the determination of the pending Appeal and reinstated the Order of the trial Court that Petitioners treat Respondent pending her appeal.

STATEMENT OF THE CASE

Respondent is a 34 year old black woman who has had end-stage renal disease for the past ten years. She has no functioning kidneys, and is dependent upon treatment on an artificial kidney machine on a regular basis to cleanse her system of excess fluids and toxic

waste build-up. Without dialysis treatment on a regular basis of three treatments per week, fluids will build up in her system and cause a condition called pulmonary edema, by which she would literally suffocate from lack of oxygen. Additionally, toxic wastes accumulate in her system, which could result in seizures or cardiac arrest. Unless Respondent receives regular dialysis treatments, she will die within a period of a few days.

Respondent lives alone in a low-income housing project in West Oakland, and her sole source of income is a monthly Social Security Insurance check of $416.00. She has four children, ages 18, 14 and 7, all of whom live in foster homes. Her twin daughters were born seven years ago, while she had a transplanted kidney. Although the children were healthy, her transplant went into rejection a year after their birth, requiring her to resume regular dialysis treatment. Because of her physical condition, she was unable to properly care for the twins, and they were removed from her care and placed in a foster home when they were 2 years old. Although the rest of her family lives locally, she receives very little assistance and support from them. She prepares her own meals and maintains her own home. She is dependent upon public transportation to get to her dialysis appointments. She acknowledges that she has emotional problems, many of which she believes are related to anxiety and stress of her physical condition. She has a long history of drug abuse.

Respondent has been receiving medical treatment

under the care of Petitioner, JOHN C. WEAVER, for six and one half years at the outpatient dialysis facility of Petitioner, BMA OF OAKLAND, INC., and inpatient treatment at PROVIDENCE HOSPITAL in Oakland. BMA OF OAKLAND, INC. is a profit-making California corporation which operates an outpatient dialysis unit which is on the premises of PROVIDENCE HOSPITAL. It is a subsidiary of National Medical Care, Inc., a publicly owned corporation. At the time of the trial, Petitioner WEAVER was associate medical director of BMA OF OAKLAND, INC. and had an investment interest in the corporation.

In November, 1978, on April 23, 1979 and again on March 5, 1980, Petitioner WEAVER notified Respondent that he was terminating his relationship with her and he would no longer treat her, because of her non-compliant, non-cooperative and anti-social behavior.

Although the usual manner in which a dialysis patient transfers from one facility is by referral from their physician, when Dr. WEAVER terminated Ms. PAYTON as his patient, he made no affirmative efforts whatsoever to assist her in getting other dialysis treatment. At the trial, he testified that, in terminating her, he knew that no other dialysis facility would accept her as a patient.

When she was notified by Dr. WEAVER that he was terminating her as his patient, Respondent, on her own initiative, contacted the other two dialysis facilities in the area which are accessible to her by public transportation, ALTA BATES HOSPITAL and HERRICK HOSPITAL.

After reviewing medical records Dr. WEAVER had given to Ms. PAYTON, and consulting with Dr. WEAVER and staff at BMA OF OAKLAND, INC., both facilities advised her that they could not accept her as a patient, because it would not be in her best interest or that of their other patients.

Because no other dialysis facility would accept her as a patient, and she has no other resource for getting treatment, on April 30, 1979, Respondent filed her Petition for Writ of Mandate to compel Petitioners JOHN C. WEAVER and BMA OF OAKLAND, INC. to provide her with life-sustaining treatment. Also named as Respondents in this action were PROVIDENCE HOSPITAL, ALTA BATES HOSPITAL and HERRICK HOSPITAL. On May 4, 1979, Petitioners JOHN C. WEAVER, BMA OF OAKLAND, INC. and also PROVIDENCE HOSPITAL entered into a Stipulation with Respondent wherein they agreed to provide her with dialysis under certain conditions. The terms of this Stipulation are set forth on pages 9 and 10 of the Petition for Writ of Certiorari. On March 5, 1980, Petitioner WEAVER advised Respondent that he was terminating his relationship with her, because of her failures to uphold her terms of the Stipulation.

On April 9, 1980, a hearing on Respondent's Petition for Writ of Mandate was commenced, and testimony was heard in the matter on April 10th, 11th and 17th. At the beginning of the trial, the trial Judge ordered that Petitioners treat Respondent pending his decision. On June 30, 1980, the trial Judge signed his Order Denying Peremptory Writ of Mandate and Injunction.

Because of the critical nature of Respondent's medical illness and the fact that her death would result in a very short time without continuing regular dialysis treatment, and also that no other health care facility would accept Respondent as a patient, on June 23, 1980, Respondent made a Motion to the trial court for a Stay of Execution of Judgment and Continuation of Temporary Order during her appeal of the above-referenced Order and Judgment. Said Motion was granted on June 30, 1980.

Since that time, Respondent has been receiving regular dialysis treatment under the medical supervision of Petitioner WEAVER. She initially received outpatient treatment at the facilities of Petitioner BMA OF OAKLAND, INC. As he indicated in his declaration dated January 13, 1981 and filed with the Appellate Court January 20, 1981, Petitioner WEAVER advised Respondent on December 18, 1980 that he would only be providing Respondent with dialysis on an inpatient basis, because, in his opinion, she was such a menace to her own health and safety. Since that time, she has been receiving regular dialysis treatment at PROVIDENCE HOSPITAL. This requires that she be admitted to the hospital before getting treatment. Because Petitioner WEAVER will not discharge her from the hospital, she is forced to leave the hospital against medical advice when the regular treatment is finished. In spite of this rather irregular procedure, Respondent's health continues in a relatively good condition, and she has continued to maintain her home and contact with her children on a regular basis.

Since Petitioner WEAVER first indicated his

intention to terminate his relationship with her, Respondent, through the vigorous assistance of her counsel, has been trying to arrange for other medical care for herself. Because of her notoriety in the dialysis community, no other dialysis provider will accept her as a patient, and there is in effect a "conspiracy of silence" on the part of other local dialysis facilities, which has resulted in Respondent's being foreclosed from getting dialysis treatment anywhere else. Using the assistance and influence of two local physicians who specialize in treatment of drug addicts, Respondent attempted to gain admission to drug treatment programs, but was consistently refused because of her medical problems. In the hope of receiving treatment through the resources of a state mental health facility, Respondent sought admission as an inpatient, but was denied because this facility accepts only patients with acute psychiatric disorders. Additionally, this institution advised Respondent that they do not have dialysis facilities on their premises, and have no power to compel private health care facilities to treat their patients.

In considering this Petition for Writ of Certiorari, it is of great significance to note that payment for services rendered has never been an issue in this case. Because of the catastrophic nature of end-stage renal disease and tremendous costs of its treatment, the federal government pays for 80% of all outpatient dialysis treatments, as well as physicians' fees and other hospitalization costs related to this disease

through Medicare under the Social Security Program. Costs not covered by Medicare are picked up by private insurance or state-funded health care programs. In 1979, the federal government expended $850.5 million on this program. As of September 30,1978, there were 60,923 beneficiaries of the program, nation-wide. Petitioners JOHN C. WEAVER and BMA OF OAKLAND, INC., as well as PROVIDENCE HOSPITAL, have been fully compensated for all medical treatment they have given to Respondent, and will continue to receive full payment from the government throughout the course of this appeal and existence of this temporary order.

The appeal has been in process for over one year. Respondent's appellate brief has been filed, and response briefs have been filed on behalf of four of the five Respondents. Recognizing the importance and broad ramifications of issues raised by this appeal, two professional organizations have filed applications to file briefs as amicus curiae on behalf of Petitioner WEAVER. Said applications have been granted, and these briefs will be filed within the next month.

REASONS FOR DENYING THE WRIT

I. The Order which is the subject of this Petition is collateral to a substantive appeal which raises issues of national public concern and has ramifications far broader than to the parties involved in this case.

It is a well accepted legal principle that courts have the inherent power to make temporary orders to preserve the status quo pending appeal. Terminal

R. Assoc. v. United States, 266 US 17, 69 LED 150, 45 Sup. Ct. 5 (1924), State v. Board of Education, 19 Wash 8, 52 P 317 (1898), Blair v. Blair, 199 Or 273, 247 P.2d 883 (1952).

In People ex Rel S. F. B. C. D. C. v. Emeryville, 69 Cal 2d 533, 72 Cal. Rptr. 790, 446 P. 2d 790 (1968), the California Supreme Court recognized the need for lower courts, on both the trial and appellate level, to exercise this power to maintain the status quo where difficult questions of law are involved, and the fruits of a reversal would be irrevocably lost without the court's intervention. In that case, the Supreme Court cautioned that this power should be used sparingly and in the exceptional case.

Other cases have recognized that, in certain circumstances, the trial court has the power to make temporary orders to preserve the status quo. Merchants Warehouse Co. v. United States, 283 US 501, 75 L Ed 1227, 51 S. Ct. 505 (1930), Palmer v. Harris, 23 Oakla. 500, 101 P 852 (1909).

The California Supreme Court affirmed the power of the trial court to continue in force a preliminary injunction so as to maintain the status quo of the subject matter of the litigation pending appeal, notwithstanding the fact that the right to the injunction was denied by the judgment itself.

> "Common fairness and a sense of justice readily suggests that while Plaintiffs were in good faith prosecuting their appeals, they should be in some way protected in having the subject-matter of the litigation preserved intact until the appellate court could settle the controversy".
> City of Pasadena v. Superior Court, 157 Cal 781, 795 (1910)

> "A trial court may be reasonably certain that the conclusion it has reached denying an injunction is correct, while at the same time, the matter may not be entirely free from doubt in its mind. Under these circumstances, and where the losing party is endeavoring to avail himself of his right of appeal and is prosecuting that right diligently, the trial court ought to have the power and the discretion to exercies it, so as to protect the subject matter of litigation from destruction pending the final determination of that right, and in order that, if it be ultimately decided that the judgment appealed from was erronecus, his property might be saved to him".
> City of Pasadena, supra, 157 Cal at p. 796.

The theory behind a court's power to issue interim orders pending appeals is so that the status quo can be maintained, and that property which is the subject matter of the appeal will not be destroyed during the process of appeal so that the appeal would be, in effect,moot. In this case, we are not dealing with property, but we are dealing with a human life. The trial Judge explicitly recognized the need for the interim order when he stated:

> "It is to preserve something that may not be available if the Court of Appeals decides that the trial Judge was wrong, and in this case, we are not talking about property, whether it be personal property, we are not talking about real property, we are talking about a human life, a person, if she does not receive regular outpatient dialysis, cannot continue to function as a human being. She will die."
> (RT 6/23/80 22:25-23:3)

The rationale underlying the right to an interim order to maintain the status quo pending appeal in the usual case are not only present in this case, but are urgent and compelling, and common decency and human compassion mandate that the Court exercise its equitable power to provide Respondent with medical treatment, while she diligently and in good faith prosecutes her appeal

which involves fundamental questions of life and death, which have ramifications which are much broader than to Petitioner's case alone. Failure to grant the interim order for medical treatment pending her appeal will render the issue of the appeal moot, and will result in destruction of property in the most graphic sense of that term. It is without dispute that Respondent will die in a brief period of a few days, if she does not receive the medical treatment which the Judge ordered in the post-judgment order, which is the subject of this Petition for Writ of Certiorari.

The trial Court made the following finding:

> "21. (Ms. Payton) has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. (Ms. Payton) therefore is not without means to arrange for her own care." (Appendix E to Petition for Writ of Certiorari, p. 8)

This finding indicates that Respondent has the freedom to enter a drug treatment program to help her deal with her drug problems. But this finding in no way deals with Respondent's problem in getting the dialysis treatment she needs.

Throughout the course of these proceedings, Petitioners have consistently maintained that Respondent has voluntary, alternative means available to her, either by entering a drug treatment program, or by voluntarily petitioning for a conservatorship. They have never addressed the question, however, of what influence or power would a drug program director or a conservator have to compel a physician or health care facility to

treat, should they decide they would not treat, the patient? The fact remains that all dialysis treatment facilities in this area are under the control of private physicians and facilities. As Respondent's experience has shown, where one physician terminates his relationship with a particular patient and thereby cuts off her access to life-sustaining medical treatment, and his colleagues acquiesce by their silence and refusal to become involved with this patient, that patient will effectively be cut off from medical treatment, and will predictably die within a brief time. A personal or legal representative would be in no better position than Respondent herself now is to arrange for her own medical treatment, until the issues raised by her appeal have been determined.

In the substantive appeal we are dealing with, very important and novel issues have arisen in the light of revolutionary advances in the field of medical technology. There are few legal and procedural guidelines to deal with a situation such as the present one. The outcome of this substantive appeal will affect physicians, health care providers, administrators and patients who are involved in the End-Stage Renal Disease program. Recognizing the importance of this, two professional groups are participating in the appeal process on behalf of Petitioner WEAVER.

The substantive appeal has now been in process for over a year, and the Order that is now the subject of this Petition for Writ of Certiorari is a temporary order incident to that appeal. Respondent has no other means to arrange for her own dialysis treatment, and

unless this temporary Order continues, she will die before the appellate process is completed.

II. Petitioner WEAVER's claim that he is being forced into involuntary servitude must be considered within the total context of this case, and the burden imposed upon Petitioners by the temporary Order must be weighed against the gravity of the consequences to Respondent, if this temporary Order is terminated before the appeal is heard.

As is indicated above, the Order which is the subject of this Petition for Writ of Certiorari is collateral to a substantive appeal which has been in process for over a year, and which is dealing with important legal issues involving the rights and responsibilities of those persons who have control over life-support machines to those patients dependent upon these for their survival. This Petition for Writ of Certiorari must be viewed in relationship to the substantive appeal and in addressing Petitioner WEAVER's claim that he is being forced into "involuntary servitude", the actual extent of the burden imposed upon by this Order must be weighed against the fact that Respondent will die before the appeal can be heard, if the Writ of Certiorari is granted.

> "A mandatory injunction, it is said, should only be granted under compelling circumstances." 42 Am Jur 2d 751, Inj. §20.
>
> "The ordinary function of an injunction pendente lite is to preserve the status quo, and it is to be issued only on a showing that there would otherwise be danger of irreparable injury." United States v. Adler's Creamery, Inc., CA 2d NY 107 72d 987, (1939), Community Natural Gas Co. v. City of Cisco, 5 Cir., 65 F2d 320 (1933).

The circumstances which gave rise to this temporary Order were extraordinarily compelling, and the trial Judge, after hearing four days of testimony and considering all the evidence before him, recognized that no other dialysis provider would accept Respondent as a patient and that, without the regular dialysis treatment, she would die before the appeal process was completed. In this case, we are talking about irreparable injury in the most literal sense of that word, i.e., death of a human being. This was the reason behind the trial Judge's issuance of this order, and the Supreme Court acted with human decency, compassion and fairness in overturning the decision of the California Court of Appeals which terminated this Order.

> "The awarding or withholding of such extraordinary relief is a matter of sound judicial discretion in the exercise of which the Court must balance the conveniences of the parties and possible injuries to them according as they may be affected thereby." Eutectic Welding Alloys Corp. v. Zeisel, 117RD 78, 79 (1950), Yakers v. United States, 321, U.S. 414, 440, 64 S. Ct. 660, 88 L.Ed 834, (1944), Rice and Adams Corp. v. Lathrop, 278 U.S. 509, 514, 49 S. Ct. 220, 73 L.Ed. 480 (1929).

> "While it is true that a mandatory or affirmative injunction should be issued with caution, and is ordinarily restricted to cases where adequate redress at law is not afforded, or where the injury is not compensable in damages, and in weighing the propriety of issuing it, a court should consider the relative convenience and inconvenience which will result to the parties from granting or refusing this form of injunctive relief." Maryland Trust Co. v. Tulip Realty of Maryland, 153 A2d 275, 284, 220 Md. 339 (1959), Baltimore & Philadelphia Steamboat Co. v. Ministers & Trustees of Stow Methodist Protestant Church, 130 A 46, 149 Md. 163 (1925).

Petitioners contend that the effect of this Order

is that Petitioner WEAVER has to be on call at all times for Respondent in order to comply with this Order. However, the experience of the past twelve months during which this Order has been in effect appears to indicate that Petitioner WEAVER has not been so burdened by this Order as to restrict his freedom of movement. As he indicated in documents previously filed with the Appellate Court, he was out of the country on a vacation for two and one half months last fall. Recently, staff at PROVIDENCE HOSPITAL advised Respondent that Petitioner WEAVER was out of the country on a month's vacation. During both of these prolonged periods of his absence and at other times intermittently when it is not convenient for him to be present, he has been able to arrange for other staff members to oversee Respondent's medical treatment, and she has received her regular dialysis treatment without any problem or incident.

Petitioners contend that this Order forces them to work under conditions which are intolerable to them, and dangerous to the safety of other patients. However, for over six months, Petitioner WEAVER has arranged to have Respondent treated on an inpatient basis at PROVIDENCE HOSPITAL where she is completely removed from the facilities, staff and patients of Petitioner BMA OF OAKLAND, INC., and given specialized treatment which he feels she needs. The effect of this arrangement on Respondent is that she virtually has to submit to incarceration in the hospital in order to get the medical treatment she needs, so that she will survive until the appeal is completed.

It is of great interest to note that throughout the entire course of these proceedings, the issue of payment for services rendered has never been raised. At all times, Petitioners and all other health care providers who have provided medical services to Respondent have been fully compensated for these services by the government, and will continue to receive full payment for these services so long as this temporary order is in existence.

Petitioners contend that the State could not compel other types of workers, such as bricklayers, milkmen or textile workers, to perform personal services for a given employer, and, therefore, the State should not compel Petitioner WEAVER to treat one particular patient. The distinctions between these occupations and Petitioner WEAVER's profession are almost too obvious to require comment. Should a bricklayer fail to perform his/her job, people might be inconvenienced, but certainly no one would die because of it. On the other hand, if a physician fails to perform his duties by not treating a person who is in danger of serious bodily harm or death, the consequences of that failure to perform are predictable and possibly deadly. Members of the medical profession supposedly take an oath whereby they commit themselves to the preservation of human life, not the destruction of it. One might reasonably assume that certain ethical oblications would flow from such an oath, which would result in that profession's feeling a higher sense of responsibility to the sick and disabled members of our society. The

Order of the California Supreme Court does not purport to dictate the terms and conditions of Petitioner WEAVER's relationship with any of his other patients or colleagues, but only imposes responsibilities as to one individual patient.

Petitioner WEAVER practices medicine under license of the State, and he specializes in a field of medicine which is almost totally supported by the government, yet he feels that he is so far beyond the reaches of legitimate legal processes that he should not have to comply with reasonable court orders. In light of the gravity of the consequences to Respondent by her not getting regular dialysis treatment, and also the great disparity between Petitioner and Respondent in their access to resources and control over their own circumstances, Petitioner WEAVER's assertion that the California Supreme Court has "created a small island of slavery" by ordering him to treat Respondent pending outcome of her appeal is unreasonable, ludicrous and completely without basis in fact or law.

CONCLUSION

The Order of the California Supreme Court that Petitioner provide regular dialysis treatment to Respondent pending her appeal does not purport to impose a permanent physician-patient relationship on Petitioner WEAVER, but is an effort to maintain the status quo pending an appeal which raises novel and fundamental issues in the light of life-sustaining medical technology, that have not been addressed before in either the legal or medical communities. The results

of this appeal will have significant impact not only on Petitioner WEAVER, but also on his colleagues who practice this very specialized and developing area of medicine. The appeal has been in process for over a year. All briefs in connection with it should be filed within the next six weeks and the issues determined within a reasonable time.

Even though Petitioner may find Respondent, her background and lifestyle offensive, the facts remain that no one else will provide dialysis treatment to her, and that she will die unless she gets this treatment. This Order of the California Supreme Court is not so burdensome on Petitioner WEAVER that he has not been able to take extended vacations while fulfilling his responsibilities under it. He has also been able to make alternative arrangements to treat Respondent in a specialized setting which, in his judgment, are necessary. Additionally, Petitioner continues to be well compensated for all his medical services rendered to Respondent.

The California Supreme Court acted reasonably and compassionately in making its temporary Order. Respondent respectfully requests that this Court employ this same logic and compassion, and allow this temporary Order to remain in effect until the substantive appeal can be decided.

Dated: July 9, 1981

Respectfully submitted,

WARREN B. WILSON
Attorney for Respondent

IN THE SUPREME COURT

OF THE

UNITED STATES

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,
Petitioners,

vs.

BRENDA MARIE PAYTON,
Respondent.

Proof of Service - Certificate by Bar Member

I, WARREN B. WILSON, attorney for BRENDA MARIE PAYTON, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 9th day of July, 1981, I caused to be served copies of the foregoing Respondent's Brief in Opposition to the Petition for a Writ of Certiorari, Motion for Leave to Proceed in Forma Pauperis, and Affidavit in support of this Motion on the several parties thereto, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as follows:

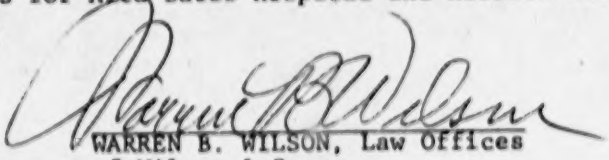
Jerome Berg, Esq.
Van Ness-Post Center Building
1255 Post Street, #1010
San Francisco, California 94109

Phillip Berry, Law Offices of Berry & Berry
1221 Broadway - Suite 1880
Oakland, California 94612
Attorneys for Providence Hospital

Charles F. Bond, II, Professional Law Corporation
240 Stockton Street, Suite 500
San Francisco, California 94108
Attorney for Petitioners,
John C. Weaver, Jr., M.D. and
BMA of Oakland, Inc.

Marrs A. Craddick, Esq., Craddick, McCandland & Conti
1801 North California Boulevard
Walnut Creek, California 94596
Attorneys for Petitioner,
John C. Weaver, Jr., M.D.

Stephen B. Peck, Esq.
Hanson, Bridgett, Marcus, Vlahos & Stromberg
333 Market Street, 23rd Floor
San Francisco, California 94105
Attorneys for Alta Bates Hospital and Herrick Hospital



WARREN B. WILSON, Law Offices
of Wilson & Casey,

Attorneys for Respondent
653-11th Street
Oakland, California 94607
(415) 465-6511

ORIGINAL

JUL 13 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-2094

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC., Petitioners

v.

BRENDA MARIE PAYTON, Respondent

AFFIDAVIT

I, BRENDA MARIE PAYTON, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to pay costs or fees: 1. I am the Respondent in the above-entitled case. 2. Because of my poverty, I am unable to pay the fees and costs of said cause. 3. I am unable to give security for the same. 4. I believe that I am entitled to the redress I seek in said case. 5. The nature of the cause is briefly stated as follows:

I suffer from end-stage renal disease which is a terminal illness requiring that I have regular dialysis treatments for my survival. Because my physician, Petitioner JOHN C. WEAVER, has refused to treat me, and it was necessary for me to file a Petition for Writ of Mandate to compel Petitioners and/or other health care providers, also named as Respondents in said

Petition,to provide me with dialysis treatment.

My Petition for Writ of Mandate was denied at the trial level, and I, through my counsel, have been prosecuting an appeal of this decision for over a year. The appeal raises important issues regarding the rights and responsibilities of those persons and facilities that have control over life-support machines to those persons who are dependent upon these machines for their survival. The issues raised by this appeal will have ramifications far broader than to just my case alone.

At the trial level, the Judge ordered that Petition WEAVER treat me pending my appeal. The California Court of Appeal, District One, Division One, granted supersedeas on behalf of Petitioner WEAVER, which, in effect, terminated this temporary order. The California Supreme Court ordered a reversal of this order, and reinstated this temporary order for my treatment. The Petitioners are now asking this Court to overturn the order of the California Supreme Court. If this Writ is granted, and the temporary order is dissolved, I will not be able to get dialysis treatment, and will die before my appeal of the substantive issues involved in this case is finished.

My only source of income is a monthly Social Security insurance check of $416.00, and I have no other assets. Throughout the course of these legal proceedings, my attorneys have represented me on a pro bono basis. To date, they have advanced costs

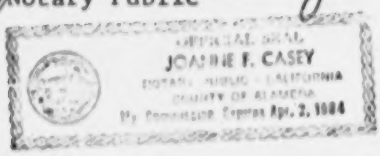
related to my appeal in excess of $1,400.00. I have no funds with which to repay these costs or to pay for any other costs which might be connected with this Petition for Writ of Certiorari.

I declare under penalty of perjury that the foregoing is true and correct.

Brenda Marie Payton
BRENDA MARIE PAYTON

Duly witnessed and sworn to
before me, a Notary Public,
this 9th day of July, 1981.

Joanne F. Casey
Notary Public



ORIGINAL

RECEIVED
JUL 13 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-2094

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC., Petitioners

v.

BRENDA MARIE PAYTON, Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, BRENDA MARIE PAYTON, asks leave to file the attached Response to Petition for Writ of Certiorari to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis* pursuant to Rule 53.

The Respondent's affidavit in support of this motion is attached hereto.

WARREN B. WILSON, Law Offices
of Wilson & Casey
Counsel for Respondent
653-11th Street
Oakland, California 94607